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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JESSICA G., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LINDA P. ,

Defendant and Appellant.

D045158

(Super. Ct. No. J514396C)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Ann Bashant, Judge. Reversed and remanded with directions.

Linda P. (Mother) appeals the judgment terminating her parental rights over Jessica G., contending the San Diego County Health and Human Services Agency (the Agency) did not give adequate notice to the relevant tribes and the Bureau of Indian Affairs (BIA) pursuant to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et

seq.). Mother's counsel, Jessica's counsel, and the Agency's counsel have filed a stipulation for reversal of the juvenile court's judgment; remand with directions that the court require the Agency to give ICWA notice, after which the court shall hold a new Welfare and Institutions Code section 366.26 hearing to determine whether ICWA applies and determine a new permanent plan; and immediate issuance of the remittitur. We accept the stipulation (Code Civ. Proc., § 128, subd. (a)(8); *In re Rashad H.* (2000) 78 Cal.App.4th 376) and reverse.

BACKGROUND

In April 2002, when Jessica was eight years old, the Agency filed a dependency petition alleging her parents' whereabouts were unknown. Later that month, the Agency filed an amended petition adding an allegation that Jessica's sibling, Jeremy G., tested positive for methamphetamine and the court dismissed the first allegation. Jessica was detained in Polinsky Children's Center, then in a short-term detention facility. After the court made a true finding on the remaining allegation of the amended petition, it placed Jessica in a foster home.

An unsigned father's paternity questionnaire, filed on April 22, 2002, the date of the detention hearing, answered "yes" to the question whether Jessica's presumed father, James G. (Father), had any American Indian heritage. In response to the request for the name of the tribe and band, the phrase "Oklahoma tribe beginning w/ 'M'" was written. At the detention hearing, the court deferred the ICWA issue and ordered Father to provide the social worker with information regarding the name of any affiliated tribe.

The jurisdictional and dispositional report, filed on May 8, 2002, stated, "Both parents have denied any American Indian [h]eritage." At the May 13 jurisdictional and dispositional hearing, the court asked Father whether he had any more information about possible Indian heritage, whether any member of his family was enrolled in a tribe, and whether he knew if his children were eligible for enrollment. Father replied, "My father was Indian. That's all I know." The court asked whether he knew the name of the tribe, and he said no. The court found ICWA did not apply, but asked Father to inform the court if he learned anything to the contrary.

At the May 12, 2003 12-month review hearing, the court directed the Agency to notify the BIA regarding Father's heritage. At the June 18 continued 12-month review hearing, the court directed the Agency to provide it with the notices and any replies from the BIA and the tribes. On June 19, the Agency filed a report stating Father said he believed his father was an "Indian from Oklahoma, possibly Choctaw or Cherokee," and the paternal grandmother said she had no additional information. The report also stated that on May 23, the Agency sent notices to the BIA, the Choctaw Nation of Oklahoma, and the Cherokee Nation of Oklahoma, and on June 16, it received a letter from the Choctaw Nation of Oklahoma. Attached to the report is a letter from the Choctaw Nation of Oklahoma regarding Jessica's sibling, Constance G. Also attached to the report are notices sent to the BIA, the Choctaw Nation of Oklahoma, and the Cherokee Nation of Oklahoma regarding Constance.

At a June 27, 2003 special hearing, the court ordered the Agency to provide it with the proper notices to the BIA and the tribes. In a July 11 report, the Agency repeated

Father's statement contained in its June 19 report and repeated that it had sent notices on May 23. It added that Father said the paternal grandfather's name was "Aubrey Tony [H.]"; Father and the paternal grandmother repeatedly said they did not know Mr. H.'s birth date, tribe, or other pertinent information; the Agency had been unable to obtain additional information since the June 27 hearing. The documents attached to this report are identical to those attached to the June 19 report.

At a July 11, 2003 hearing, the court deferred the ICWA issue until the next hearing. The record contains no further reference to ICWA. The Welfare and Institutions Code section 366.26 hearing took place on September 14, 2004. At the hearing, the court found Jessica was adoptable, apparently basing the finding on her placement with a family who wished to adopt her.

DISCUSSION

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

Here, according to the parties' joint application and stipulation for reversal, "the juvenile court erred when it terminated parental rights without properly complying with the notice requirements of . . . ICWA as interpreted under current case law" and Jessica is

no longer adoptable because she has been removed from her prospective adoptive home, she is 14 years old, and there are currently no families interested in adopting her. We note that Jessica is 10 years old, not 14, and need not address the parties' representation she has been removed from her prospective adoptive home and is no longer adoptable.

Our independent review of the record, summarized above, leads us to conclude that we should accept the stipulation for reversal. First, there is no reasonable possibility that reversal will adversely affect the interests of nonparties. A stipulated reversal will expedite the ICWA notice process and therefore benefit any Indian entities should ICWA be found to apply. Father, who has not appealed, will achieve reversal of the termination of his parental rights. Nor is there a reasonable possibility that reversal will adversely affect the interests of the public. This is not a public matter or one affecting the public.

Second, the reason the parties request reversal is to allow compliance with ICWA and, apparently, to ensure Jessica does not remain a legal orphan. Because a stipulated reversal will expedite the ICWA notice process, as well as permanence for Jessica, the public trust will not be eroded. On the contrary, public trust in the courts and their judgments will be advanced by knowing that the Agency, counsel, and the courts will seek to correct errors promptly and reasonably, avoiding delays that might affect children and families. (Cf. *In re Rashad H.*, supra, 78 Cal.App.4th at p. 381.) Nor will a stipulated reversal run the risk of reducing any incentive for pretrial settlement. (*Ibid.*)

DISPOSITION

The judgment terminating parental rights is reversed. This matter is remanded to the juvenile court, with directions that it (1) require the Agency to give proper ICWA

notice and file with the court the notices, return receipts, and any responses; and (2) hold a new Welfare and Institutions Code section 366.26 hearing. If, at the hearing, the court determines ICWA notice was proper and a tribe does not seek to intervene or otherwise indicate Jessica is an Indian child as defined by ICWA, the court shall determine and order a permanent plan for her. If, on the other hand, an Indian entity determines Jessica is an Indian child under ICWA, the court shall conduct the detention, disposition and all subsequent hearings in accordance with ICWA. The remittitur is to issue forthwith.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.